



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

October 31, 2012

**Via E-Mail and Certified First Class**  
**U.S. Mail — Return Receipt Requested**

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Jonathan Newton  
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Newton.Jonathan@epa.gov

**RE: FREEDOM OF INFORMATION ACT REQUEST No. HQ-FOI-01841-12 ("FOIA Request")**

Dear Messrs. Miller, Newton and Wachter and Ms. Kelly:

On August 10, 2012, the States of Alabama, Arizona, Georgia, Kansas, Michigan, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming ("**Requesting States**") submitted to the U.S. Environmental Protection Agency ("**EPA**") the FOIA Request. As set forth in the timeline below, since August 10, 2012, Oklahoma has received several communications from EPA concerning the FOIA Request, each of which the State has responded to timely. Despite Oklahoma's timely responses, EPA has to date ignored the Requesting States' requests and responses, and has proceeded to close the States' appeal of EPA's denial of the States' fee waiver request. The Requesting States are greatly concerned by these events and are frustrated by EPA's apparent lack of regard for the FOIA Request. The Requesting States ask for an immediate response to this letter, and that the States' appeal of the fee waiver request be reopened and considered by EPA.

#### **TIMELINE OF COMMUNICATIONS FROM AND WITH EPA**

- By letter dated August 21, 2012 from Mr. Larry F. Gottesman, National FOIA Officer, EPA denied the Requesting States' fee waiver request.
- By letter dated September 14, 2012, Mr. Wachter notified Oklahoma that the description of the documents requested in the FOIA Request was too broad and therefore the Request failed to describe adequately the records sought. Mr. Wachter's letter directs the State of Oklahoma to contact Mr. Jonathan Newton within 30 calendar days of the date of the letter "to discuss and modify [the] request to meet the requirements of the regulations."
- On September 20, 2012, the Requesting States timely filed their appeal of EPA's denial of fee waiver request. In their appeal, the Requesting States establish they have clearly met all of the statutory and regulatory requirements necessary to be granted a fee waiver.
- In a letter dated October 1, 2012, EPA re-sent its September 14, 2012 letter to Oklahoma. Due to a clerical error, the September 14, 2012 letter was sent to an incorrect address and the Oklahoma Attorney General did not receive the letter. The October 1 letter specifically noted that "the deadlines for [Oklahoma] to contact the EPA to discuss and modify your request" is extended to be **30 calendar days** from October 1, 2012.
- By letter dated October 23, 2012, **22 calendar days after** EPA's October 1 letter, Mr. Miller wrote to inform Attorney General Pruitt that, "because [the Requesting States] do not currently have a proper request pending before the Agency, I cannot evaluate your fee waiver appeal and am closing your appeal file as moot." Mr. Miller also notes in his letter that Oklahoma has 30 calendar days from October 1, 2012, to address a modification to the description of the records requested.
- On October 26, 2012, **5-days before the 30 calendar day deadline set forth in EPA's October 1 letter expired**, P. Clayton Eubanks, Assistant Attorney General State of Oklahoma, sent to Mr. Newton a request to discuss a modification to the description of records requested in the FOIA Request. Mr. Eubanks also called and left Mr. Newton two voice mails asking that Mr. Newton call him back to discuss a modification to the description of records requested. A copy of Clayton Eubanks October 26 email is included with this letter.
- On October 30, 2012, Clayton Eubanks sent a request to Director of the EPA Office of the Executive Secretariat, Eric Wachter asking that the States' FOIA file remain open until the States could submit a revised FOIA Request and requesting that the States be given until November 19, 2012 to submit the revised FOIA Request. A copy of Clayton Eubanks October 30, 2012 email is included with this letter.



- On October 31, Clayton Eubanks spoke with Mr. Newton by telephone regarding possible scope modification of the FOIA Request. Mr. Eubanks' conversation with Mr. Newton did not result in any information the States could use to narrow the scope of the request. In that conversation, in an effort to accommodate the EPA's concerns that the States' initial FOIA Request failed to adequately describe the records sought, Mr. Eubanks again asked:
  1. What additional descriptions/information does EPA need from the States to identify and locate the information the States have requested.
  2. If the request is limited to correspondence between the "Interested Organizations" as set forth in the request, and the EPA Administrators Office and each of the EPA Regions, regarding the cases set forth in Attachment "A" of the request, does that sufficiently narrow the scope of the request so that EPA may conduct a search for the documents?

Mr. Newton, responded that it may be more appropriate to single out a specific case and try and determine what documents may exist for that case. If that approach can be used for one case, can't it be used to determine what documents exist between the EPA and the listed Interested Organizations on each of the cases set forth in Attachment "A" of the States' FOIA Request?

In order for the Requesting States to modify the description of the FOIA documents requested, we must be able to have a discussion with EPA regarding how to modify the request. Yet, other than Clayton Eubanks' phone call with Mr. Newton, EPA has failed to respond to Oklahoma's numerous communications regarding this very point. And now, not even waiting for the 30 calendar day deadline to pass, EPA uses the Requesting States alleged failure to describe adequately the documents requested as the reason not to consider the States' appeal of the fee waiver denial and to close the appeal.<sup>1</sup> This lack of regard for the FOIA Request and the Requesting States' appeal of the fee waiver denial is unacceptable. Accordingly, the Requesting States request that EPA:

1. Respond promptly to Clayton Eubanks' timely communications
2. Reopen the appeal of the fee waiver denial
3. Confirm by what date a decision on the appeal of the fee waiver denial is expected

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<sup>1</sup>We understand that as a result of Hurricane Sandy federal government operations in Washington D.C. have been suspended or closed for a time, which may have prevented a prompt response to Mr. Eubanks' email. However, Mr. Miller's decision to close the Requesting States' appeal was made on October 23, one week before the 30 calendar day deadline ran, and well before Hurricane Sandy necessitated the closure of federal government operations in Washington D.C.

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4. Confirm that the States FOIA Request remains open and confirm that the States have until November 19, 2012 to submit a revised FOIA Request

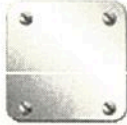
Thank you for your prompt attention to this matter.

Sincerely,

E. SCOTT PRUITT  
Oklahoma Attorney General

A handwritten signature in blue ink, appearing to read 'P. Eubanks', with a stylized flourish at the end.

P. Clayton Eubanks  
Assistant Attorney General  
(405) 522-8992



**FOIA Request HQ-FOI-01841-12**

Clayton Eubanks to: Newton.Jonathan  
Cc: Tom Bates

10/26/2012 11:06 AM

From: Clayton Eubanks/OAG  
To: Newton.Jonathan@epa.gov,  
Cc: Tom Bates/OAG@OAG

Mr. Newton,

Please see the correspondence attached. I am contacting you to try and set up a time to discuss with you a scope modification of the referenced FOIA Request.

I would like to determine the following:

1. What additional descriptions/information EPA needs from the States to identify and locate the information the States have requested.
2. If the request is limited to correspondence between the "Interested Organizations" and the EPA Administrators Office and each of the EPA Regions will that narrow the Scope of the request enough for EPA to conduct the search for documents?

I would also like to confirm with you that this email serves as a Response within 30 days as set forth in the September 14, 2012 letter from EPA and that EPA will not be closing this FOIA Request file until the States are able to respond to EPA with a revised FOIA Request.

I would also request that the States be given until November 19, 2012 to submit a revised FOIA Request. Also the States filed an Appeal of EPA's Denial of Fee Waiver Request. The EPA acknowledged receipt of that appeal by letter dated September 26, 2012. I would also like to check on the status of that Appeal.

Thank you



EPA FOIA Response October 2012.pdf

P. CLAYTON EUBANKS  
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**FOIA Request HQ-FOI-01841-12**

Clayton Eubanks to: wachter.eric, Newton.Jonathan, ogis,  
miller.kevin

10/30/2012 11:06 AM

Cc: Tom Bates

Mr. Wachter,

Please see the correspondence attached. Pursuant to your letter to the Oklahoma Attorney General dated September 14, 2012, and follow up letter dated October 1, 2012, this email serves as a response within 30 days as set forth in those letters. In the September 14, 2012 letter you state that the States' Freedom of Information Act Request HQ-FOI-01841-12 fails to adequately describe the records sought as required by 40 C.F.R. Section 2.102(c). You also state that if we wanted the opportunity to discuss and modify our request to meet the requirements of the regulations to contact Jonathan Newton at EPA to discuss scope modifications. I have called and left 2 messages for Mr. Newton at (202) 566-1981 and also sent Mr. Newton the attached email dated 10/26/2012 to discuss scope modifications, to date I have not received a response.

The States would like to discuss scope modifications of our request and are willing to submit a revised FOIA Request. We would like to determine the following:

1. What additional descriptions/information EPA needs from the States to identify and locate the information the States have requested.
2. If the request is limited to correspondence between the "Interested Organizations" as set forth in the request, and the EPA Administrators Office and each of the EPA Regions, regarding the cases set forth in Attachment "A" of the request, does that narrow the scope of the request enough for the EPA to conduct a search for the documents?

Please confirm that this email serves as a response within 30 days as set forth in your letters dated September 14 and October 1, 2012. Further please confirm that our FOIA file will not be closed until the States can discuss scope modification with EPA and the States are able to respond to EPA with a revised FOIA request. We request that the States be given until November 19, 2012 to discuss scope modification with EPA and to submit a revised FOIA Request.

Additionally, on September 21, 2012 the States filed an Appeal of EPA's Denial of Fee Waiver Request. Yesterday, October 29, 2012, this office received a letter of denial of that Appeal from EPA.

The denial states that

"Because you do not currently have a proper request pending before the agency, I cannot evaluate your fee waiver appeal and am closing your appeal file as moot.

Should you respond to the OA within the 30 days provided please indicate in your response whether you are seeking a fee waiver for your revised request, so that the Office of Environmental Information may process your revised fee waiver request."

This email also serves as a response within 30 days advising that the States are seeking a fee waiver for the revised FOIA request and request that the appeal file remain open until the States can discuss scope modifications with the EPA and submit a revised FOIA request. As stated above, the States request until November 19, 2012 to submit the revised FOIA request.

Thank you for your consideration and prompt attention to this matter.



EPA FOIA Response October 2012.pdfFOIA Email To EPA Newton.pdf



EPA Letter - General Counsel Denial of Fee Waiver Appeal.pdf

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